

Service Date: May 31, 2006

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER NorthWestern Energy's)	UTILITY DIVISION
Application for Approval of Electric Supply)	
Deferred Cost Account Balance and)	DOCKET NO. D2006.5.66
Projected Electric Supply Cost)	ORDER NO. 6740

PROTECTIVE ORDER

On May 9, 2006, NorthWestern Energy (NWE) filed before the Public Service Commission (PSC) a motion for protective order to govern certain information expected to be filed in this NWE electric supply cost tracker proceeding (Motion). NWE's Motion is proper in form, supported by an affidavit, and includes information as required by and in compliance with ARM 38.2.5007(3) through (4)(a)(iv).

In its Motion NWE requests protection of information relating to:

- A. Actual and forecasted detailed monthly expenses of third-party Demand-Side Management (DSM) suppliers and the monthly invoices supporting these costs;
- B. Forecasts of detailed monthly prices of electricity to be supplied for Default Supply obligations under contract;
- C. Forecasts of detailed monthly volumes of electricity to be supplied for Default Supply obligations under contract;
- D. Prices associated with RFP responses, auction responses, broker negotiated supply, or negotiation proposals;
- E. Volumes associated with RFP responses, auction responses, broker negotiated supply, or negotiation proposals;
- F. Location of delivery of the electricity associated with RFP responses, auction responses, broker negotiated supply, or negotiation proposals; and

G. NWE's, an RFP administrator's, or a broker's evaluation of the parties from whom NWE purchases or may purchase electricity, the associated costs and volumes and the location of delivery of the electricity.

NWE argues that the identified information is trade secret in accordance with § 30-14-402, MCA, and that it is confidential business information entitled to protection.

The PSC determines NWE has failed to demonstrate sufficient cause in fact and law that the information described in A is entitled to protection from uncontrolled public disclosure. NWE argues that the information described in A is secret; that NWE enters into agreements to keep it secret; that confidentiality of this information is a standard industry practice; and that if NWE is not able to provide confidentiality, suppliers may be unwilling to offer their services or the services will be offered at higher prices.

Item A

The information described in A represents expenditures for DSM that NWE expects to recover from its Default Supply customers. The information reveals the prices charged third-party suppliers. Prices may be, but are not necessarily, trade secrets. In determining whether the prices charged by the third-party suppliers constitute trade secrets, the Commission examines (1) the extent to which the information is known outside of the third party's business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. Neither the Motion, nor the accompanying affidavit, provides the facts necessary for the Commission to make a determination. The Motion does not even identify the third party suppliers. Mere conclusory statements, even if averments of fact, and conclusory allegations of harm do not support a finding that information is a trade secret.

Items B and C

The PSC determines that NWE has shown good and sufficient cause in fact and law that the information described in B and C, to the extent that the information is NWE's forecast based on its business judgment, is entitled to protection from uncontrolled public disclosure pursuant to § 69-3-105, MCA, as trade secret as defined at

§ 30-14-402, MCA. The PSC grants NWE's request for a protective order and hereby orders that information submitted in accordance with this order be treated as "confidential information" under the terms of this order and PSC protective order rules, ARM 38.2.5001 through 38.2.5030. Only the detailed information that is based on NWE business judgment and can not be inferred from publicly available information, particularly Electric Quarterly Reports required to be filed by sellers with the Federal Energy Regulatory Commission, is trade secret. Nothing in this protective order should be construed as extending to contracts or transactions into which NWE has entered and under which deliveries have been made.

Items D, E, F, and G

The PSC defers consideration of that portion of the Motion that deals with information described in items D, E, F, and G until such time, if any, that a party or the PSC requests any of the so-described information.

Order

THEREFORE, based upon the foregoing, it is ORDERED that:

1. NorthWestern Energy's motion for a protective order covering actual and forecasted detailed monthly expenses of third-party Demand-Side Management supplies and monthly invoices supporting these costs is DENIED;
2. NorthWestern Energy's motion for a protective order covering forecasts of detailed monthly prices of electricity to be supplied for Default Supply obligations under contract and forecasts of detailed monthly volumes of electricity to be supplied for Default Supply obligations under contract is GRANTED; and
3. Decision on NorthWestern Energy's motion for a protective order covering all other information is deferred until such time, if any, that a party or the PSC requests any of the information.

DONE AND DATED this 23rd day of May 2006, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGSON, Chairman

BRAD MOLNAR, Vice Chairman

DOUG MOOD, Commissioner

ROBERT H. RANEY, Commissioner

THOMAS J. SCHNEIDER, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

Montana Public Service Commission
Protective Orders and Protection of Confidential Information

Nondisclosure Agreement

(7-26-00)

ARM 38.2.5012

Docket No. D2006.5.66, Order No. 6740

Order Action Date: May 23, 2006

I understand that in my capacity as counsel or expert witness for a party to this proceeding before the commission, or as a person otherwise lawfully so entitled, I may be called upon to access, review, and analyze information which is protected as confidential information. I have reviewed ARM 38.2.5001 through 38.2.5030 (commission rules applicable to protection of confidential information) and protective orders governing the protected information that I am entitled to receive. I fully understand, and agree to comply with and be bound by, the terms and conditions thereof. I will neither use nor disclose confidential information except for lawful purposes in accordance with the governing protective order and ARM 38.2.5001 through 38.2.5030 so long as such information remains protected.

I understand that this nondisclosure agreement may be copied and distributed to any person having an interest in it and that it may be retained at the offices of the provider, commission, consumer counsel, any party and may be further and freely distributed.

Typed or Printed Name

Signature

Date of Signature

Business Address:

Employer

Party Represented